IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2555 of 2006

MANOHAR LAL LODHA
V/S
ANOKHI DEVI & ORS.

Mr. ASHOK CHHANGANI, for the appellant / petitioner

Mr. TRIBHUVAN GUPTA, for the respondent

Date of Order : 16.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By the impugned order, learned trial Court has dismissed the application filed by the petitioner for amendment of the written statement seeking to introduce a plea that the plaintiffs have no right to maintain the suit as the promisee Dinesh Kumar has executed a Will of all his property in favour of his father, Madan Lal, who is alive, and it was submitted by learned counsel for the petitioner that a probate of that Will has also been granted, and that was not in the knowledge of the petitioner earlier. The learned trial Court has found that the suit is a suit for specific performance of the contract, wherein an application under Order 7 Rule 11 on the ground of the probate had already been dismissed, and if the amendment is allowed, it would enlarge the scope of the suit, while the suit can be decided on the basis of the pleadings already there on record. It has then been found that the facts

desired to be added by way of amendment are not necessary for determining the real question in controversy between the parties, and has thus, dismissed the application.

During course of hearing, it transpires that the Will is also said to be of 17.12.93, while the agreement to sale for specific performance whereof the suit has been filed is also dated 17.12.93 itself. In such circumstances, it is the moot question that might arise, as to whether the Will included the rights flowing from that agreement also, and I repeatedly asked learned counsel for the petitioner to satisfy, as to whether the rights flowing from this agreement are also subject matter of that Will or not, which learned counsel could not satisfy.

Thus, considering the totality of circumstances, I do not find any error in the order of the learned trial Court. The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

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